



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,621	06/15/2001	Erwin Houtzager	4957US	8472
24247	7590	12/16/2003	EXAMINER	
TRASK BRITT			HILL, MYRON G	
P.O. BOX 2550			ART UNIT	
SALT LAKE CITY, UT 84110			PAPER NUMBER.	
			1648	19

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/882,621	HOUTZAGER ET AL.	
	Examiner	Art Unit	
	Myron G. Hill	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1- 45 is/are pending in the application.
- 4a) Of the above claim(s) 1- 11 and 16- 45 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 12- 15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 17. 6) Other:

DETAILED ACTION

This action is in response to the amendments of 9/12/03 and 10/3/03

Claims 12- 15 are under consideration.

Information Disclosure Statement

A signed and initialed copy the IDS (paper 17, 9/12/03) is enclosed.

Rejections Withdrawn

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12- 15 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant traversed the rejection, explained the terms and pointed to examples in the specification.

The explanation has overcome the rejection. The examiner understands the "mutant form" of the coat protein has lost the ability to mediate infection of a natural host by itself. The claim is drawn to an infectious phage. There are no restrictions or limitations on the infectious phage except that it contain a "mutant form" of a coat

protein to have lost the ability to mediate infection of a natural host, and the open language of the claim permits the phage that contains the mutant form to be infectious.

Rejections Maintained

Claim Rejections - 35 USC § 102

Claims 12- 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Borrebaeck.

Applicant argues in the Supplemental Response, filed to clarify a potentially ambiguous statement in respect to the third phage of Borrebaeck, that Borrebaeck teaches three phages and none of them anticipate the claimed invention.

The argument has been fully considered and not found persuasive.

The phage description cited by the examiner in the rejection of record, which is also the same as cited by applicant in the initial response, discloses an infectious phage that contains a mutant form of coat protein. The coat protein is mutated by truncating the wild-type coat protein. Applicant's statement of prior art knowledge (page 2, last paragraph, Supplemental Response) indicates that it was known in the art that protein 3 consists of N1, N2, and CT and that a protein 3 deletion or truncation that does not contain N1 or N1 and N2 is not infectious. Example 2 discloses a mutant form of protein 3 that is a Fab and CT fusion. The claims do not exclude that this mutant form of coat protein can be complimented with a helper phage that makes infectious phage with the mutant coat protein.

The rejection is maintained.

Conclusion

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Myron G. Hill whose telephone number is 703-308-4521. The examiner can normally be reached on 9am-6pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Myron G. Hill
Patent Examiner
December 12, 2003



JEFFREY STUCKER
PRIMARY EXAMINER